

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

JEFFREY A. SPITTLER and JAMES E.
SCHOFFSTALL, as Administrators of the
Estate of Jeremy Michael Spittler,

Plaintiffs,

v.

MARYLAND CASUALTY COMPANY,

Defendant.

CIVIL ACTION NO. 3:05-CV-1648

(JUDGE CAPUTO)

MEMORANDUM

Plaintiffs Jeffrey A. Spittler and James E. Schoffstall, in their capacity as the administrators of the estate of Jeremy Michael Spittler, filed a Complaint against Defendant Maryland Casualty Company on August 12, 2005. (Doc. 1.) Although Plaintiffs asserts that the Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332, the Court finds that Plaintiffs have failed to properly alleged diversity of citizenship in the Complaint.

"It is . . . well established that when jurisdiction depends upon diverse citizenship the absence of sufficient averments or of facts in the record showing such required diversity of citizenship is fatal and cannot be overlooked by the court, even if the parties fail to call attention to the defect, or consent that it may be waived." *Thomas v. Bd. of Trs.*, 195 U.S. 207, 211 (1904). Moreover, "[w]hen the foundation of federal authority is, in a particular instance, open to question, it is incumbent upon the courts to resolve such doubts, one way or the other, before proceeding to a disposition of the merits." *Carlsberg Res. Corp. v. Cambria Sav. & Loan Ass'n*, 554 F.2d 1254, 1256 (3d Cir. 1977); see also

FED R. Civ. P. 12(h)(3).

Here, Plaintiffs' Complaint fails to sufficiently aver facts showing complete diversity of citizenship. For purposes of diversity of citizenship, a corporation is a citizen of "the State where it has its principal place of business" and "the State by which it has been incorporated." 28 U.S.C. § 1332(c)(1). Plaintiffs have not alleged any facts by which the Court can discern Defendant's principal place of business. Accordingly, the Court will dismiss the Complaint for lack of subject matter jurisdiction pursuant to Rule 12(h)(3) of the Federal Rules of Civil Procedure.

An appropriate order shall follow.

August 18, 2005
Date

/s/ A. Richard Caputo
A. Richard Caputo
United States District Judge

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ORDER

NOW, this 18th day of August, 2005, **IT IS HEREBY ORDERED THAT:**

- (1) Plaintiffs' Complaint (Doc. 1) is **DISMISSED**.
- (2) The Clerk of the Court shall mark this case **CLOSED**.

/s/ A. Richard Caputo
A. Richard Caputo
United States District Judge